IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Martin *et al.*	**Conf. No.:**	2124
Serial No.:	09/917,536	**Art Unit:**	2142
Filing Date:	07/27/2001	**Examiner:**	Blair, Douglas B.
Title:	REGULATING ACCESS TO A SCARCE RESOURCE	**Docket No.:**	GB920010042US1 (IBMR-0127)

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Commissioner for Patents
P.O. Box 1450
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a prima facie case of obviousness based on an error in facts. Claims 1-56 are pending in this application.

Turning to the rejection, in the final Office Action, claims claims 1-15, 19-35 and 39-56 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Agrawal *et al.* (U.S. Patent No. 6,606,661), hereafter "Agrawal" in view of Bondarenko *et al.* (U.S. Patent No. 6,389,028), hereafter "Bondarenko." Claims 16-18 and 36-38 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Agrawal in view of Bondarenko and further in view of Slotznick (U.S. Patent No. 6,011,537), hereafter "Slotznick." Applicants submit that these rejections are clearly not proper and are without basis because at least one claim limitation is not

met by the cited references. For example, as argued in the March 24, 2006, After Final Amendment, the references cited by the Office fail to teach or suggest each and every element of independent claim 1 and similarly of independent claims 21, 41 and 54-56. In particular, the cited references fail to that an enqueued user may remain enqueued while navigating away from the scarce resource. . See Request for Reconsideration, pages 15-16. The Office argues that the term "navigating away from…encompasses opening a new browser to navigate resources." Office Action of September 8, 2005, page 3 incorporated by reference in Final Office Action of April 12, 2006, page 2. However, as argued by Applicants on several occasions, in the Office's example, the browser window that originally accessed the scarce resource remains connected to the scarce resource even when a user opens a browser window and / or session in addition to the accessing window. Amendment (12/08/05) pages 15-16, After Final Amendment (03/24/06), page 16. To this extent, the user in the Office's example merely navigates "in addition to" and never navigates "away from" the scarce resource. As such, in contrast to the cited references, the application used by the user of the claimed invention to navigate to the scarce resource does not have to remain connected to the site in order to remain enqueued. Instead, the application may remain enqueued while navigating away from the scarce resource. The cited references do not provide such a feature.

Furthermore, as argued in the Request for Reconsideration with respect to claims 20 and 40, the cited references fail to teach or suggest responsive to determining that said access level is currently at a desired maximum, determining whether said scarce resource is able to accommodate immediate access by said late requester. Request for Reconsideration, pages 16-17. The Office does not dispute the fact that the cited references make no special provision to give immediate access to a user that has exceeded its time period. Instead, the Office argues, in

the alternative, that either the "desired maximum" is equivalent to the physical limits of the scarce resource, in which case it could never allow late access, or it is an "arbitrary value that is below the actual maximum capacity of the resource," in which case the claimed invention has no difference in procedure between regular access and late access.

In the response to the arguments that accompany the Office's first scenario, Applicants content in their After Final Amendment that the desired maximum is never claimed as being the physical limit of the scarce resource but is rather a "desired" maximum, e.g., a maximum number of requests that it is desired that the scarce resource process simultaneously. Page 17. As such, the scarce resource may have a desired maximum number of requests and still be able to accommodate a late requester. Page 17. Applicants submit that the fact that "desired maximum" is not a "true maximum" does not have the weight attributed to it by the Office.

For example, a college may have to adhere to a state mandated class size of twenty-five students per class (true maximum), yet also have a desired maximum of twenty students per class. The fact that the desired maximum is below an absolute maximum does not make the desired maximum meaningless in and of itself. It does, however, allow the college the ability to use discretion if, for example, someone who was unable to sign up for the class because of the twenty student desired maximum needed the class to graduate. In this scenario, a regular requester would not be allowed into the class, whereas the graduating requester might be allowed in if the enrollment was still below the twenty-five student limit. In a similar manner, the late requester access of the claimed invention sets limits on the access to the scarce resource by regular requesters while giving the system the ability of the system to use discretion in the case that there is a late requester and the access level is currently at the desired maximum.

To further illustrate this feature of the claimed invention, Applicants, in their Final Office Action, provide an example in which the differences between procedures regarding regular and late users of the claimed invention are shown. Page 19. This illustration shows a scenario in which the late requestor of the claimed invention may be granted immediate access even when the access level of the scarce resource is at the desired maximum, whereas a regular user would automatically be placed in the queue. This is in contrast to the cited references in which all scenarios use the same process. Thus, the determining step for a late request as included in the claimed invention is not taught by the cited references. Accordingly, the Office has failed to state a prima facie case of obviousness, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With regard to the Office's other arguments regarding claims that depend from the claims referred to herein, the dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

Applicants respectfully submit that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

Date: June 26, 2006

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